

§ 115.69 Imminent Breach.

(a) *No prior approval requirement.* SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond. The PSB Surety does not need SBA approval to make Imminent Breach payments.

(b) *Amount of reimbursement.* The aggregate of the payments by SBA under this section cannot exceed 10% of the Contract amount, unless the Administrator finds that a greater payment (not to exceed the guaranteed portion of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment under any provision of these regulations in this part.

(c) *Recordkeeping requirement.* The PSB Surety must keep records of payments made to avoid Imminent Breach.

§ 115.70 Claims for reimbursement of Losses.

(a) *How claims are submitted.* A PSB Surety must submit claims for reimbursement on a form approved by SBA no later than 1 year from the date the Surety paid the amount. Loss is determined as of the date of receipt by SBA of the claim for reimbursement, or as of such later date as additional information requested by SBA is received. Subject to the offset provisions of part 140, SBA pays its share of Loss within 90 days of receipt of the requisite information. Claims for reimbursement and any additional information submitted are subject to review and audit by SBA.

(b) *Surety responsibilities.* The PSB Surety must take all necessary steps to mitigate Losses when legal action against a bond has been instituted, when the Obligor has declared a default, and when the Surety has established a claim reserve. The Surety may dispose of collateral at fair market value only. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle or defend the suits. The Surety must handle and process all claims under the bond and all settlements and recoveries in the same manner as it does on non-guaranteed bonds.

(c) *Reservation of SBA's rights.* The payment by SBA of a PSB Surety's claim does not waive or invalidate any of the terms of the PSB Agreement, the regulations in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must repay the specified amounts to SBA.

§ 115.71 Denial of liability.

In addition to the grounds set forth in § 115.19, SBA may deny liability to a PSB Surety if:

(a) The PSB Surety's guaranteed bond was in an amount which, together with all other guaranteed bonds, exceeded the allotment for the period during which the bond was approved, and no prior SBA approval had been obtained;

(b) The PSB Surety's loss was incurred under a bond which was not listed on the bordereau for the period when it was approved; or

(c) The loss incurred by the PSB Surety is not attributable to the particular Contract for which an SBA guaranteed bond was approved.

PART 117—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF SBA—EFFECTUATION OF THE AGE DISCRIMINATION ACT OF 1975, AS AMENDED

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APPENDIX A TO PART 117

AUTHORITY: Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

SOURCE: 50 FR 41648, Oct. 11, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 117 appear at 68 FR 51349, Aug. 26, 2003.

§ 117.1 Purpose.

The purpose of this part is to effectuate the provisions of The Age Discrimination Act of 1975, as amended (hereinafter referred to as the *Act*), to the end that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under programs or activities receiving financial assistance or any financial activities of the Small Business Administration to which this Act applies. The Act also permits recipients of Federal funds to continue to use certain age distinctions and other factors other than age which meet the requirements of the Act and these regulations in the conduct of programs and the provision of services to the public.

§ 117.2 Application of this part.

(a) This part applies to all recipients of Federal financial assistance administered by the Small Business Administration, whether or not the specific type of Federal financial assistance administered is listed in appendix A.

(b) For the purposes of this part, the prohibition against age discrimination applies to natural persons of all ages.

(c) This part does not apply to the employment practices of any recipients.

[50 FR 41648, Oct. 11, 1985, as amended at 68 FR 51349, Aug. 26, 2003]

§ 117.3 Definitions.

As used in this part:

(a) The term *act* means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).

(b) The term *action* means any act, activity, policy, rule, standard, or method of administration; or the use of

any policy, rule, standard, or method of administration.

(c) The term *age* means how old a person is, or the number of years from the date of a person's birth.

(d) The term *age distinction* means any action using age or an age-related term.

(e) The term *age-related* means a word or words which necessarily imply a particular age or range of ages (for example, *children*, *adult*, *older persons*, but not *student*).

(f) The term *agency* means a Federal department or agency that is empowered to extend financial assistance.

(g) The term *applicant* means one who applies for Federal financial assistance.

(h) The term *Federal financial assistance* includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(i) The term *normal operation* means the operation of a business or activity without significant changes that would impair its ability to meet its objectives.

(j) The term *program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local